

## REMARKS

This Response is submitted in reply to the non-final Office Action mailed on September 7, 2007. Also included is a Terminal Disclaimer and associated fee. The Commissioner is hereby authorized to charge any other fees that may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-511 on the account statement.

Claims 38-71 are pending. Claims 38-47 and 61-71 were previously withdrawn. Claims 48-60 are rejected under 35 U.S.C. §102 and §103 and are provisionally rejected on the ground of non-statutory obviousness-type double patenting. In response, Claim 48 has been amended and Claims 56 and 57 have been canceled. The amendment does not add new matter. In view of the amendment and for the reasons set forth below, Applicants respectfully request that the rejections be withdrawn.

In the Office Action, Claims 48-55 and 58-60 are rejected under 35 U.S.C. §102(e) as anticipated by U.S. 6,471,999 to Couzy et al. ("Couzy"). Amended independent Claim 48 recites, in relevant part, a dietary component comprising an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of a pet to digest lipid, wherein the intestinal mucosa function-promoter comprises an omega-3 fatty acid derived from fish oils. The amendment is supported in the specification at page 10, lines 21-27. Applicants respectfully submit that *Couzy* fails to disclose or suggest every element of the present claims.

For example, *Couzy* fails to disclose or suggest a dietary component comprising an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of a pet to digest lipid as required, in part, by independent Claim 48. Instead of teaching the ability to digest lipid, *Couzy* is directed to milk compositions that avoid or significantly reduce the gastrointestinal problems associated with the consumption of lactose. See, *Couzy*, column 2, lines 1-4. While the Office Action asserts that *Couzy* teaches a pet milk powder that reduces gastrointestinal intolerance, *Couzy* clearly attributes this intolerance to the lactose in cow's milk and not the ability to digest lipids. See, *Couzy*, column 1, lines 32-33.

By contrast, Applicants have found that in pet animals, the absorption of lipid is highly correlated with the absorption of other essential nutrients, for example vitamin E. Hence, a pet

with low lipid digestibility is susceptible to deficient or sub-optimal nutritional status, which can compromise its health. See, specification, page 9, lines 20-23.

Further, *Couzy* fails to disclose or suggest a dietary component comprising an intestinal mucosa function-promoter, wherein the intestinal mucosa function-promoter comprises an omega-3 fatty acid derived from fish oils as required, in part, by Claim 48. Instead, *Couzy* teaches use of lipid sources including vegetable oils such as soybean oil, sunflower oil, safflower oil, corn oil, peanut oil, and rapeseed oil, or animal fats such as milk fats and tallow. See, *Couzy*, column 3, lines 19-21. Nowhere does *Couzy* teach or suggest the use of omega-3 fatty acids derived from fish oils.

Therefore, Applicants respectfully submit that *Couzy* fails to disclose or suggest every element of the present claims. Accordingly, Applicants respectfully request that the anticipation rejection of Claims 48-55 and 58-60 be withdrawn.

In the Office Action, Claims 48-60 are rejected under 35 U.S.C. §103(a) as being unpatentable over WO 02/15719 to Fuchs et al. (“*Fuchs*”). Applicants respectfully submit that *Fuchs* fails to disclose or suggest every element of the present claims.

For example, *Fuchs* fails to disclose or suggest a dietary component comprising an intestinal mucosa function-promoter, wherein the intestinal mucosa function-promoter comprises an omega-3 fatty acid derived from fish oils as required, in part, by Claim 48. Rather, *Fuchs* discloses suitable lipid sources for its invention, the sources including high oleic sunflower oil, high oleic safflower oil, sunflower oil, safflower, rapeseed oil, soy oil, olive oil, canola oil, corn oil, peanut oil, rice bran oil, butter fat, hazelnut oil, structured lipids and fractionated coconut oils. See, *Fuchs*, page 8, lines 21-24. Similar to *Couzy*, nowhere does *Fuchs* teach or suggest the use of omega-3 fatty acids derived from fish oils.

In the Office Action, Claims 48-49, 52-55, and 58-60 are rejected under 35 U.S.C. §103(a) as being unpatentable over US 5,290,571 to Bounous et al. (“*Bounous I*”) or US 5,451,412 to Bounous et al. (“*Bounous II*”). Applicants respectfully submit that the cited references fail to disclose or suggest every element of the present claims.

For example, *Bounous I* and *Bounous II* both fail to disclose or suggest a dietary component comprising an intestinal mucosa function-promoter, wherein the intestinal mucosa function-promoter comprises an omega-3 fatty acid derived from fish oils as required, in part, by Claim 48. Rather, both *Bounous I* and *II* are directed to a whey protein composition (and method

for producing same) comprising a suitable concentration of whey protein concentrate, wherein the whey protein concentrate contains proteins that are present in an essentially denatured state. See, *Bounous I* and *Bounous II*, Abstract, Claim 1. Similar to the previously cited references, nowhere does either *Bounous I* or *Bounous II* teach or suggest the use of omega-3 fatty acids derived from fish oils. In fact, *Bounous I* and *Bounous II* fail to even disclose or suggest the use any omega-3 fatty acids.

Therefore, Applicants respectfully submit that the cited references fails to disclose or suggest every element of the present claims. Accordingly, Applicants respectfully request that the obviousness rejections of Claims 48-60 be withdrawn.

In the Office Action, Claims 48-60 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting over Claims 39-60 of co-pending Application No. 10/509,949. Submitted with this response is a Terminal Disclaimer disclaiming the terminal part of any patent granted on the pending application extending beyond the expiration date of the U.S. Patent Application 10/509,949.

Accordingly, Applicant respectfully requests that the provisional rejection of Claims 48-60 under non-statutory obviousness-type double patenting be withdrawn.

For the foregoing reasons, Applications respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

  
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